

Part 4

Limitations and Special Provisions on Sentences

76-3-401 Concurrent or consecutive sentences -- Limitations -- Definition.

- (1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. The court shall state on the record and shall indicate in the order of judgment and commitment:
 - (a) if the sentences imposed are to run concurrently or consecutively to each other; and
 - (b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is already serving.
- (2) In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.
- (3) The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.
- (4) If a written order of commitment does not clearly state whether the sentences are to run consecutively or concurrently, the Board of Pardons and Parole shall request clarification from the court. Upon receipt of the request, the court shall enter a clarified order of commitment stating whether the sentences are to run consecutively or concurrently.
- (5) A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.
- (6)
 - (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).
 - (b) The limitation under Subsection (6)(a) does not apply if:
 - (i) an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment; or
 - (ii) the defendant is convicted of an additional offense based on conduct which occurs after his initial sentence or sentences are imposed.
- (7) The limitation in Subsection (6)(a) applies if a defendant:
 - (a) is sentenced at the same time for more than one offense;
 - (b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of the defendant's initial sentence; or
 - (c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present offense did not occur after his initial sentencing by any other court.
- (8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows:
 - (a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years; and
 - (b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.

- (9) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the term that provides the longer remaining imprisonment constitutes the time to be served.
- (10) This section may not be construed to restrict the number or length of individual consecutive sentences that may be imposed or to affect the validity of any sentence so imposed, but only to limit the length of sentences actually served under the commitments.
- (11) This section may not be construed to limit the authority of a court to impose consecutive sentences in misdemeanor cases.
- (12) As used in this section, "imprisoned" means sentenced and committed to a secure correctional facility as defined in Section 64-13-1, the sentence has not been terminated or voided, and the person is not on parole, regardless of where the person is located.

Amended by Chapter 129, 2002 General Session

76-3-402 Conviction of lower degree of offense -- Procedure and limitations.

- (1) If at the time of sentencing the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, and after having given any victims present at the sentencing and the prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute, the court may enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.
- (2) If the court suspends the execution of the sentence and places the defendant on probation, whether or not the defendant is committed to jail as a condition of probation, the court may enter a judgment of conviction for the next lower degree of offense:
 - (a) after the defendant has been successfully discharged from probation;
 - (b) upon motion and notice to the prosecuting attorney;
 - (c) after reasonable effort has been made by the prosecuting attorney to provide notice to any victims;
 - (d) after a hearing if requested by either party under Subsection (2)(c); and
 - (e) if the court finds entering a judgment of conviction for the next lower degree of offense is in the interest of justice.
- (3)
 - (a) An offense may be reduced only one degree under this section, whether the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees.
 - (b) In no case may an offense be reduced under this section by more than two degrees.
- (4) This section does not preclude any person from obtaining or being granted an expungement of his record as provided by law.
- (5) The court may not enter judgment for a conviction for a lower degree of offense if:
 - (a) the reduction is specifically precluded by law; or
 - (b) if any unpaid balance remains on court ordered restitution for the offense for which the reduction is sought.
- (6) When the court enters judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.
- (7)
 - (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

- (b) A person required to register as a sex offender for the person's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a sex offender.
- (8) As used in this section, "next lower degree of offense" includes an offense regarding which:
 - (a) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and
 - (b) the court removes the statutory enhancement pursuant to this section.

Amended by Chapter 145, 2012 General Session

76-3-403 Credit for good behavior against jail sentence for misdemeanors and certain felonies.

In any commitment for incarceration in a county jail or detention facility, other than the Utah State Prison, the custodial authority may in its discretion and upon good behavior of the inmate allow up to 10 days credit against the sentence to be served for every 30 days served or up to two days credit for every 10 days served when the period to be served is less than 30 days if:

- (1) the incarceration is for a misdemeanor offense, and the sentencing judge has not entered an order to the contrary; or
- (2) the incarceration is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order to the contrary.

Amended by Chapter 91, 1998 General Session

76-3-403.5 Work or school release from county jail or facility -- Conditions.

When an inmate is incarcerated in a county jail or in a detention facility, the custodial authority may, in accordance with the release policy of the facility, allow the inmate to work outside of the jail or facility as part of a jail or facility supervised work detail, to seek or work at employment, or to attend an educational institution, if the inmate's incarceration:

- (1) is not for an offense for which release is prohibited under state law; and
- (2)
 - (a) is for a misdemeanor offense, and the sentencing judge has not entered an order prohibiting release under this section; or
 - (b) is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order prohibiting release under this section.

Amended by Chapter 148, 2007 General Session

76-3-405 Limitation on sentence where conviction or prior sentence set aside.

- (1) Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied.
- (2) This section does not apply when:
 - (a) the increased sentence is based on facts which were not known to the court at the time of the original sentence, and the court affirmatively places on the record the facts which provide the basis for the increased sentence; or

- (b) a defendant enters into a plea agreement with the prosecution and later successfully moves to invalidate his conviction, in which case the defendant and the prosecution stand in the same position as though the plea bargain, conviction, and sentence had never occurred.

Amended by Chapter 291, 1997 General Session

76-3-406 Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.

Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation shall not be granted, the execution or imposition of sentence shall not be suspended, the court shall not enter a judgment for a lower category of offense, and hospitalization shall not be ordered, the effect of which would in any way shorten the prison sentence for any person who commits a capital felony or a first degree felony involving:

- (1) Section 76-5-202, aggravated murder;
- (2) Section 76-5-203, murder;
- (3) Section 76-5-301.1, child kidnaping;
- (4) Section 76-5-302, aggravated kidnaping;
- (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);
- (6) Section 76-5-402.1, rape of a child;
- (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-5-402.2(1)(b), (1)(c), or (2);
- (8) Section 76-5-402.3, object rape of a child;
- (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection 76-5-403(4)(b), (4)(c), or (5);
- (10) Section 76-5-403.1, sodomy on a child;
- (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under Subsection 76-5-404(2)(b) or (3);
- (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- (13) Section 76-5-405, aggravated sexual assault; or
- (14) any attempt to commit a felony listed in Subsection (6), (8), or (10).

Amended by Chapter 366, 2011 General Session

76-3-406.5 Aggravating factors in imprisonment for certain criminal homicide cases.

- (1) As used in this section:
 - (a) "Cohabitant" has the same definition as in Section 78B-7-102.
 - (b) "Position of trust" includes the position of a spouse, parent, or cohabitant.
- (2) It is an aggravating factor that the person occupied a position of trust in relation to the victim.
- (3) The Board of Pardons and Parole shall consider the aggravating factor in Subsection (2) in determining the length of imprisonment for a person convicted of:
 - (a) aggravated murder under Section 76-5-202;
 - (b) murder under Section 76-5-203; or
 - (c) manslaughter under Section 76-5-205.
- (4) The sentencing court shall consider the aggravating factor in Subsection (2) in sentencing a person convicted of manslaughter under Section 76-5-205.

Amended by Chapter 3, 2008 General Session

76-3-407 Repeat and habitual sex offenders -- Additional prison term for prior felony convictions.

- (1) As used in this section:
 - (a) "Prior sexual offense" means:
 - (i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (ii) sexual exploitation of a minor, Section 76-5b-201;
 - (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
 - (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through (iii); or
 - (v) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (iv).
 - (b) "Sexual offense" means:
 - (i) an offense that is a felony of the second or third degree, or an attempted offense, which attempt is a felony of the second or third degree, described in Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (ii) sexual exploitation of a minor, Section 76-5b-201;
 - (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
 - (iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii); or
 - (v) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (iv).
- (2) Notwithstanding any other provision of law, the maximum penalty for a sexual offense is increased by five years for each conviction of the defendant for a prior sexual offense that arose from a separate criminal episode, if the trier of fact finds that:
 - (a) the defendant was convicted of a prior sexual offense; and
 - (b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a) before the defendant was convicted of the sexual offense for which the defendant is being sentenced.
- (3) The increased maximum term described in Subsection (2) shall be in addition to, and consecutive to, any other prison term served by the defendant.

Amended by Chapter 320, 2011 General Session

76-3-409 Child abuse or sex offense against child -- Treatment of offender or victim -- Payment of costs.

- (1) Any person convicted in the district court of child abuse, or a sexual offense if the victim is under 18 years of age, may be ordered to participate in treatment or therapy under the supervision of the adult probation and parole section of the Department of Corrections, in cooperation with the division of children, youth, and families until the court is satisfied that such treatment or therapy has been successful or that no further benefit to the convicted offender would result if such treatment or therapy were continued. The court may also order treatment of the victim if it believes the same would be beneficial under the circumstances. Nothing in this section shall preclude the court from imposing any additional sentence as provided by law.
- (2) The convicted offender shall be ordered to pay, to the extent that he or she is able, the costs of his or her treatment, together with treatment costs incurred by the victim and any administrative costs incurred by the appropriate state agency in the supervision of such treatment. If the convicted offender is unable to pay all or part of the costs of treatment, the court may order the appropriate state agency to pay such costs to the extent funding is provided by the Legislature

for such purpose and shall order the convicted offender to perform public service work as compensation for the cost of treatment.

Amended by Chapter 212, 1985 General Session